

1 vehicles that we might appropriately use in addition to
2 that, which is, as I said, work that we do that we will
3 continue to do.

4 MR. TALBOT: And just to, I guess, point out the
5 obvious that, of course, the underlying problem in many
6 markets that although the WTO agreement on basic telecom was
7 a good one as far as it went, there are still many countries
8 out there that are non-liberalized. And it's certainly our
9 hope that in the next round, there will be some focus on
10 telecom that will get more countries opening up and we'll
11 have more accelerated commitments by those that have opened
12 up.

13 MS. ARBOGAST: And we, of course, completely agree
14 with that. I think that where we have focused our efforts
15 is on recognizing that no matter how good that agreement
16 was, if implementation is less than vigorous, the agreement
17 that's done at the end of the day isn't going to do much but
18 open up our market. And so that's why we've been working
19 very, very aggressively. And many of the regulators come to
20 us and seek our help in trying to figure out how to put in
21 competitive safeguards. So I think that we have been
22 focused very much on implementation, helping other countries
23 implement.

24 All right, we're going to move to structural
25 ownership. I think Pat a couple of questions. We're coming

1 into the middle of a conversation that's been going on that
2 I interrupted a bit to get us back on track. But let's go
3 back to the issues of whether there are certain ownership
4 structures that raise competitive problems.

5 MR. DEGRABA: I think a start way of putting it is
6 to note that in the domestic markets we have in the U.S.
7 probably seven or eight independently owned small business
8 networks and a lot of providers who don't own any of the
9 networks were able to then buy capacity on these independent
10 networks, that can also independently increase capacity.

11 If you'll look Trans Pacific, you see a very
12 different structure. You see sort of everybody or virtually
13 everybody who wants to go across the Pacific all owning one
14 network that then expands capacity, sort of as one unit,
15 rather than a lot of independent capacity owners that can
16 expand capacity unilaterally. So there's two questions.

17 The first is, why should undersea cable look so
18 much more different than domestic terrestrial cable? And
19 the second one is, should we be worried about it?

20 MR. MULETA: Can I go?

21 MR. DEGRABA: Sure.

22 MR. MULETA: I think the ownership issue recently
23 has become one of financing, not of -- I mean, it's really
24 driven by financing and where the demand of new services,
25 such as the Internet are taking various players.

1 We don't think, for example, what happened in the
2 Pacific is, from our understanding of in the marketplace,
3 there was a period, a time lag, between the delivery of new
4 capacity and where the market was heading. So things became
5 very tight and people looked out and forecasted the capacity
6 they needed and joined various systems, because there wasn't
7 time to wait to design it yourself and build the third or
8 fourth or fifth cable system.

9 There is a lot of issue that people were trying to
10 determine. For example, is it easier to outsource project
11 management of a construction of a cable, even if you have
12 the capital? Is it cheaper to pull your capital to build a
13 system than it is to go on it by yourself? What sort of
14 risks are you willing to take? Should you let somebody
15 build it and then take resale rights as you describe the
16 U.S. to be?

17 So I think various players made their decisions.
18 And as it happens, given the situation in the marketplace at
19 the time the decisions had to be made, the one that seemed
20 the best optimization of risk of capital was the one to join
21 a consortium type of cable. Because it gave you both the
22 benefits and -- the benefits of equity participation, which
23 is that it allows you to have some control, some say over
24 the capacity of being built and designed. And second of
25 all, it provided you a better price, because you could

1 negotiate -- well, let me step back a minute. Because you
2 were providing capital, you could design the system in a way
3 that allows you to have competition on the backhaul side,
4 which, in effect, lowers your unit cost for the system.

5 So there's a whole bunch of factors that came
6 together as to why certain parties made decisions in the
7 Pacific. So I think our answer is that the ownership issue
8 is really one of capital today, how fast you can assemble
9 it, how much risk you're willing to take for your equity,
10 for your capital contribution. And I don't think we should
11 foreclose consortium types of bills, because it is a
12 response of the marketplace to share risk. And I think
13 that's what's taking place today.

14 MR. DEGRABA: Peter seems to be antsy here.

15 MS. MURRAY: This will just take a second. I
16 think you need to look at the fact that in Asia, there
17 really aren't that many markets that are open. You have
18 Japan, Australia, but when you look at the Atlantic Russian
19 region, you've got basically all of Europe is open, compared
20 to Asia. And so you've got a lot more cables, you've got a
21 dozen or more cables on that route, current and proposed.

22 And Asia, we hope will look more like that, the
23 Asia Pacific region, we hope will look more like that in the
24 future, but there's a high amount of risk in the Pacific
25 Ocean region right now, because, you know there are very few

1 markets that are open. And to require carriers to put out
2 \$1.2 billion for one route, it seems to be a little
3 excessive.

4 I don't know that we would personally be willing
5 to take that risk. We're not primarily in the business of
6 building cables, unlike Global Crossing.

7 MR. DEGRABA: Let me suggest one thing before I
8 move on to Peter, and that is, there are various kinds of
9 risks back when I was in business school we learned. One of
10 them is the market demand might not show up to meet the
11 capacity you decide to build. With the forecasts of the
12 demand that's growing, that's probably not a huge risk in
13 this market. Of course, it's not my money out there, so
14 maybe I'm wrong.

15 The second thing, you just don't know what your
16 competitors are going to do, but if they decide to extend
17 their capacity, well, you're not spending yours, that might
18 be a problem. The first kind of risk we're sort of happy to
19 see protected against. The second kind of risk, if you tell
20 me that I joined the cable in order to sort of guard against
21 the second kind of risk, for public policy reasons, we may
22 not sort of be all that happy with that kind of answer.

23 You know, \$1.2 billion sounds like a lot and maybe
24 it is and maybe it's not. I'd be sort of more interested in
25 over the course of time, to sort of look more deeply into

1 what other kinds of risks that are being assuaged by having
2 every single carrier be a part owner on the same facility.

3 MR. MULETA: I think the problem I'm having is not
4 every carrier, at least in the Pacific, on the inquiry in
5 the Pacific, not every carrier decided to join the
6 consortium. What happened was that one carrier, one
7 potential player, decided to build their own. Which is
8 great, that's what we want competition to do, take the risk.

9 The risk is that everybody else might want to also build
10 their own system, and they might build it by participating
11 in a consortium kind of cable. That is the risk that, you
12 know, that's the risk people were taking when they decided
13 to build the system.

14 And what we don't want to happen is for the
15 Commission to step in and say, well, it's wrong for you to
16 share risk where you find it appropriate. Again, there's no
17 collusion, the parties are not trying to carve up the
18 market, all those kind of fears are addressed and are taking
19 place. I think it's great to have somebody take all the
20 risk and for another players to take parts of the risk,
21 okay, where their capital allows them to take the risk.

22 So I think what we want is both kind of systems to
23 take place, okay, so long as it doesn't foreclose from
24 either system taking from ours. So I think from our point
25 of view, the second risk we say that there is a, you know,

1 your competitors might increase your capacity and you'd be
2 left. That's a real risk in our business, because that
3 means you're dead. If you don't have capacity on business,
4 you're dead. So that is something, a significant risk, that
5 we try and offset.

6 I think you're asking the question in a different
7 manner, but from our point of view, that's a real risk of
8 being locked out of a marketplace because there's no
9 available capacity. Okay, because the demand is always
10 there, we just can't get the capacity.

11 MS. MURRAY: I think, Pat, you should be a lot
12 more concerned if there are resale restrictions, but in the
13 particular consortium cable on Japan U.S., there were no
14 resale restrictions. You have 45 carriers that are free to
15 resale capacity and compete against each other that way.
16 And I'm not sure that the competitive cable market has, I
17 think they may have resale restrictions.

18 So, you know, I think that's quite pro-
19 competitive.

20 MR. DEGRABA: Peter?

21 MR. COWHEY: Well, I think, Pat, you've made the
22 right point, which is there's exploding demand and there is
23 no difficulty in financing a \$1.2 billion venture nowadays.
24 You take out a non-recourse loan to do this and it is a
25 risk for a company, but it is a perfectly viable financial

1 project.

2 So, clearly, these consortia are not existing
3 because there is no way to finance cables except with a
4 consortium. It is true that companies and carriers will
5 vary in their preferences about different types of financial
6 risks for different purposes, and that's why a competitive
7 marketplace offering lots of alternatives is what you want,
8 so that people can take different alternatives.

9 Now the right question, I think, to ask is, does
10 an FCC effort to try to further enhance competition in
11 infrastructure in the international cable transport market
12 require an end to all consortium arrangements? In our view,
13 it does not. What it does require, just as in many forms of
14 competition rules, is a limit on certain types of
15 combinations in the marketplace, not an end to all
16 consortium relationships. So that there should be maximum
17 flexibility while having selective intervention to limit
18 particularly overly excessive combinations of market power.

19 MR. VALLS: I think I'd like to add a little bit
20 of private sector reality from a smaller company. \$1.2
21 billion is a lot of money and it's very difficult to get
22 that kind of money in any marketplace to finance a cable
23 system.

24 I also would like to add that, in our particular
25 case, we participate in cable consortiums and we also

1 purchase from private providers of cable. And we really
2 like to have the choice to be able to do both cases, so that
3 we would inspire the Commission to do anything necessary to
4 keep our choices open.

5 MS. ARBOGAST: Can I follow up with just a
6 question which is, assuming, you know, that we agree that it
7 is desirable to allow folks to have the choice of how
8 they're going to do their ownership structure, whether
9 they're going to spread the risk, is there anything we
10 should do to guard against the possibility, or is it even a
11 real possibility that the folks, say you've got A, B and C
12 carriers that are on the consortia carrier, on the foreign
13 end, you've got someone who's either a monopolist or a
14 dominant carrier. Should we worry about the fact that the
15 other carriers that are not on that consortia might be
16 discriminated against by the folks who have the ability to
17 discriminate in the foreign market? Should we be worried?
18 If we should be worried, is there anything we can do?

19 MR. MULETA: Can you say the hypothetical? I was
20 just trying to understand the hypothetical. Could you
21 restate it?

22 MS. ARBOGAST: Well, you might just have said the
23 hypothetical. You have five companies that are U.S.
24 companies that have decided to become members of a
25 consortia, and you've got five others that did not, for

1 whatever reason.

2 On the far end of the consortia, you've got folks,
3 you have companies that if they're not monopolists, they
4 have very important market power and the ability to
5 discriminate. Should we be worried that they may
6 discriminate against companies that are not part of their
7 partners on the cable?

8 MR. MULETA: Oh, some sort of collusive behavior
9 between the people that are in the consortium about how they
10 allow access to the facilities on the other end, on the
11 foreign end?

12 MS. ARBOGAST: That discrimination in terms of the
13 ability to interconnect, once you get to the foreign end,
14 either of those others.

15 MR. MULETA: From PSINet's point of view, that is
16 a real risk of all of this, is power that's exerted on the
17 foreign end. Cause, you know, if you guys can't influence
18 that, you know, that is a real risk. But I don't think it's
19 necessarily a behavior of the U.S. carriers that are part of
20 the consortium. It's not an obvious conclusion for me to
21 say that the U.S. carriers are sort of, you know, pushing
22 for this sort of behavior to take place.

23 And part of your investigation ought to be, you
24 know, what does the arrangement allow for, does it allow for
25 resale rights? Does it allow for competitive access to

1 backhaul facilities, all those kind of things? Because what
2 the consortium members might actually be doing is opening up
3 the market for those who, for one reason or another, could
4 not participate because they didn't have the capital, for
5 example, to participate in this \$1.2 billion or \$1.5 billion
6 bill.

7 So it's not an obvious conclusion that there's bad
8 behavior on the U.S. carrier's point of view.

9 MR. VALLS: I think I would also like to add, in
10 our particular case, where we are a carrier's carrier, we're
11 typically negotiating agreements with operating companies at
12 foreign ends, a lot of times it's easier for us to be able
13 to negotiate an agreement if we already participate in a
14 consortium. For example, we participate in the FLI
15 consortium today, so it's sometimes easier for us to go into
16 a country and say we're participants in a consortium and so
17 that we can work with you easily, because the facility is
18 already alive in your country.

19 And we know that in those cases, for example, into
20 Egypt and into India, it's unlikely that we're going to
21 overcome the monopoly power of the foreign partner for a
22 long time to come. So participating in a consortium does
23 give us, it gets us a certain perimeter when we walk into a
24 country, to be able to negotiate an agreement with that
25 foreign country.

1 I also like the fact that when we are
2 participating in a consortium, as you mentioned before, we
3 are basically buying credit that I could spend to develop a
4 circuit into Egypt or develop a circuit into India or
5 develop a circuit into Thailand, which allows me to
6 negotiate with three entities with the possibility of
7 reaching an agreement with one entity, and then using my
8 credits to go into that country where I have had a
9 successful negotiation. Because any of you who have tried
10 to negotiate with foreign entities know that it's a very
11 tricky situation.

12 So that I do believe in that sense, the consortium
13 cables provide us with, it provides us with a flexible
14 mechanism to be able to enter into several markets when
15 you're dealing from a carrier's carrier point of view.

16 MS. ARBOGAST: Thank you.

17 MR. TALBOT: Jim Talbot with AT&T. I'd just like
18 to go back to Pat's earlier question for a moment. As Ken
19 mentioned earlier, U.S. carriers need low cost capacity.
20 We're competing in a highly competitive upstream market, and
21 what we need from our consortium cables is the lowest cost
22 capacity we can get.

23 And the consortium cables provide this. And the
24 reason they do so is that unlike private cables, consortium
25 cables are not profit making. They allow all carriers to

1 take equity positions without the huge risk exposure that
2 you have if you build your own cable. The risks are greater
3 on undersea facilities. The Commission has recognized this
4 in its endorsement of consortium cables for some 35 years.

5 Unlike terrestrial cables, you can't build and use
6 consortium undersea cables on an incremental basis. You
7 can't turn them on until you've fully built. Once they're
8 built, there's very limited things you can do to reflect
9 latest technological developments. There was a huge
10 technology risk. All capacity can become outdated very,
11 very quickly. Per SDM costs as a result of changing
12 technology have come down from well over \$50 million back in
13 the late 80s to \$10 million to just a few years ago with TAT
14 12, 13. When TAT 14 is turned up for service in 2001, the
15 per SDM are going to be something like \$400,000. You've got
16 to plan your investments extremely carefully, to make sure
17 that you can take advantage of the lowest cost capacity to
18 provide the services, the low-cost services that your
19 customers require.

20 Global Crossing is well aware of this. They told
21 the FCC in '98 that, in fact, there were very substantial
22 barriers to entry on building undersea. And it's those kind
23 of realities that have formed the Commission policies for
24 many years.

25 MR. DEGRABA: I would throw out one last question,

1 I guess, at least for this part, to kind of push the
2 analysis one step forward and don't expect an answer today,
3 but perhaps in the future, which is, there are compelling
4 stories about why consortium cable, in general, are good and
5 sort of I understand them. But I guess the piece that's
6 missing is, and this is sort of the symbol of my earlier,
7 perhaps, economist question. There's nothing that I've
8 heard so far -- maybe the answer is out there and I'll get
9 it later -- about why there just needs to be one consortium
10 cable of 480. All the stories I've heard today are
11 consistent with two consortium cables of 240 each.

12 So that's at least one piece of the analysis that
13 I think is still missing. If you want to make a compelling
14 affirmative case for a single cable with a large number, and
15 the vast majority of the carriers on it, as opposed to a few
16 independently owned consortia.

17 MR. MULETA: This is John Muleta. I think what
18 we're trying to describe is that this is a very dynamic
19 marketplace in which in the Pacific, for example, what
20 happened was that there was a very, very narrow window in
21 which people had to make a decision. It was either build or
22 not build. There was one alternative that was announced,
23 and people were coming up and saying, let's build another
24 one.

25 And what happened was that a lot of players said,

1 this is a good way of diversifying our capital. They didn't
2 foreclose buying on the private cable. All they said was,
3 this would be a good way of getting, of diversifying our
4 capital. And if, you know, System A comes in first, we'll
5 buy in System A if it's priced right. And if System B comes
6 in and if it's priced right, we'll use that. You know, in
7 essence, you make that capital commitment.

8 So I don't think there's been any discussion that
9 it should only be a single cable, a single consortium. It
10 can be multiple consortiums. But the question is,
11 assembling the consortium takes time. You know, this is a
12 lot of negotiations that have to go on. People have to
13 negotiate among themselves, among multiple parties. So when
14 you have a narrow window, it happens that only one was built
15 in that instance, and only one consortium and another cable
16 system, which was a private cable. Okay, so what it gave
17 was two alternatives into the marketplace. Okay, that's the
18 important thing to note in that instance.

19 If you look across the Atlantic, there are
20 consortium cables. They are not called consortium cables.
21 There are, for example, there is at least one that has been
22 announced which sounds like a consortium cable, but it's
23 under the guise of several partners working for a joint
24 venture. Okay, so it's not clear as to whether it's a
25 consortium or not. There are other cables that are being

1 designed the same way, and then there is a public consortium
2 like TAT 14 in which, you know, it's declared itself as a
3 consortium.

4 So I don't think your statement that we've been
5 talking about one or nothing is true. The one thing that
6 I'd like to note is, in any instance where you have a
7 consortium, the key thing to keep in mind is that there
8 should be transparency. Okay, that is one of the things
9 that the Commission should strive for, the information is
10 public, that people are aware that who the parties are and
11 sort of what are the deals that are being struck, just so
12 that the Commission can have an indication about what's
13 going on in the marketplace.

14 MR. DEGRABA: Thank you.

15 MS. ARBOGAST: Yeah, one more comment on this
16 topic then we've got two other topics that I want to leave
17 some time for and we've just about run out of time.

18 MR. COWHEY: My points will be appropriately
19 brief. The first is, this question of requiring a
20 consortium to handle risk is one that I would hope at this
21 point should be a dead question, in the sense that we have
22 evidence already that the marketplace will finance non-
23 consortium arrangements to lay full capacity undersea
24 cables, number one.

25 Number two, the problem for undersea cables is not

1 substantially different from global satellite systems, where
2 they have to have the system up before you turn on the
3 services in full, but you have the ability to finance those
4 systems, as well. Whether they succeed or fail in the
5 marketplace is a separate question.

6 The third point I want to make is that the notion
7 that we need a public utility model here both goes back to
8 the false notion that public utilities are the best way to
9 build out capacity, competitively and in a technologically
10 innovative way. And also speaks, carries forward the myth
11 that these consortium were offered at cost. For example, on
12 backhaul, they were not offered at cost traditionally. And
13 I might note that AT&T was always a landing party on these
14 cables. I'm thus able to make the margins that came from
15 non-competitively priced backhaul.

16 But the real point I want to conclude with is
17 that, in fact, much of the discussion here is really about
18 two points. One, that the Commission should have a clear
19 set of guidelines to the marketplace on an aid priority
20 basis about what is likely to be permissible or not. It is
21 possible to negotiate a joint venture in a timely, efficient
22 way to share costs among parties if they knew what types of
23 joint ventures are acceptable.

24 And that leads to the final point which is the
25 Commission should be focusing on what constitutes an overly

1 inclusive joint venture to build a cable and defining that
2 clearly for the marketplace so the marketplace knows how to
3 deal with that. They can build joint venture, club cables,
4 consortium cables, but not overly inclusive ones.

5 MS. ARBOGAST: Wait, wait, if we keep on, we'll be
6 here all night and ten seconds, ten seconds, then we're
7 going to move onto the next thing.

8 MR. MULETA: Okay, ten seconds. Beware of inputs
9 into the cable construction, so the manufacturers and those
10 parties actually exert a great deal of influence into the
11 availability of cable systems, so people that have control
12 over inputs are people you should be taking a look at, as
13 well. Not necessarily asserting jurisdiction, but just
14 taking a look at.

15 MR. TALBOT: There is significant competition in
16 the undersea cable market. There's a huge amount of
17 capacity going in, both public and private. In fact, we've
18 had the leading builder say to us that 80 percent of new
19 capacity is now private. There is no evidence of any
20 competitive harm to private cables. The Commission really
21 should not proceed without facts and I'd submit we've really
22 seen no facts today that provide a basis for launching a
23 proceeding to look at policies that have worked well for
24 years and continue to work extremely well in giving U.S.
25 carriers a choice of different arrangements to meet the

1 needs for cheap capacity for their customers.

2 And particularly in launching any kind of
3 inquiring to rules, the just dependency of them would
4 effectively chill consortium cables until the issue was
5 resolved, thus helping -- meaning that U.S. carriers could
6 lose critical planning windows, unable to pursue the
7 consortium option, because they wouldn't know what the rules
8 of the game would be going forward.

9 MS. ARBOGAST: Thanks. I just want to throw out
10 one question that I don't even want comments on right now,
11 because I want to move to the other topic. But one of the
12 things that had been triggered on something that you had
13 mentioned, Kerry, about that the resale, one of the things
14 that we should look at are whether there are restrictions on
15 the ability to resell at capacity.

16 The question I just have for folks, that you can
17 get back to us later, is one of the things that we should
18 also be looking at whether there are serious restrictions on
19 a resale until the pool capacity is sold? And I'd just like
20 people's thoughts on that, but not now.

21 We have two more topics to cover and I think we're
22 going to need to give each about five minutes. The next one
23 is, on a going forward basis, again, not looking at any past
24 or pending proceedings that we have, but on a going forward
25 basis, are there any circumstances where we should be

1 somehow wary of taking a close look at or otherwise
2 constraining price differentials, especially volume
3 discounts?

4 MR. NAKAMURA: This is Kent Nakamura from Sprint.

5 My understanding from our business people about the
6 submarine cable business is in some ways, it's sort of like
7 building a big shopping mall. You need anchor tenants and
8 you need it so that you can get the money to build the
9 thing. And the anchor tenants, however, are also in a
10 position to extract very good prices, just like Nordstrom's
11 or Bloomingdale's, you know, you can be sure will pay
12 cheaper rent than, you know, a small fast food place in a
13 big shopping mall.

14 So volume discounts doesn't necessarily mean that
15 there's a competitive problem.

16 MS. ARBOGAST: Is there a volume discount, is
17 there an obscene volume discount as someone had once said in
18 our meetings? Is there anything that would be so outrageous
19 that we should take a look at it?

20 MR. MULETA: I think where I would be worried
21 would be where essentially they're getting the capacity for
22 free.

23 (Laughter.)

24 MR. MULETA: And where there has been no -- you
25 know you guys try to do that. No, but I think in essence

1 where the upgrade rights would essentially reflect the total
2 first that's available. I mean, in that instance, I think
3 you'd be worried about, and that also, you have to add into
4 it how much control do they have over the upgrade rights?
5 Okay, as part of the VPA, if they get a right to upgrade it
6 or they have the majority and if the ownership is structured
7 not on, you know, percentage of capital, but let's say,
8 percentage of capacity, you know, there are things that you
9 can monkey around with to allow you to essentially have
10 control over the system. That's really the driver for us to
11 be very concerned as a private party to this is, if we see
12 that the VPA is really structured as a way of giving all
13 control to one or two -- one or a few players.

14 MS. ARBOGAST: Okay, any other comments on volume
15 discounts?

16 MR. TALBOT: Without getting into the pending
17 proceeding on that issue, just to point out that you have
18 dealt with these issues on a case by case, you look at a
19 variety of factors. The one that Kent mentioned, the
20 competitive nature of the route, and we think those rules
21 are really adequate to deal with those issues.

22 MS. ARBOGAST: Okay, anything else?

23 MR. COWHEY: I think that if you look at the size
24 of the differentials that exist in the market on pricing
25 today, you might reasonably suspect that they reflect some

1 elements of market power at work inside the pricing system
2 and I suspect that that's what John was trying to point us
3 to gently -- or not so gently, maybe.

4 But, in the long run, of course, an efficient
5 market may have differences in pricing for different
6 parties, and so it would be better if you had the market
7 structurally competitive with multiple systems out there, so
8 that the pricing differentials reflect more efficient
9 economic incentives, rather than just simply market power.

10 MR. NAKAMURA: This is Kent Nakamura from Sprint.

11 I am aware of at least one situation on these new cables
12 where several carriers came together to combine their needs
13 in order to get a better discount on the price was
14 essentially arbitraging the price structure.

15 MR. MULETA: Any system, private or common
16 carrier, that disallows parties to, non-dominant players, to
17 take advantage of discounts by, you know, sort of enjoying
18 either joint venture partners or some other form, I think I
19 would be very concerned with, as a public policy matter, you
20 know. Allowing people to pool their capital to reduce their
21 costs on either private or consortium cable, common carrier
22 or non-common carrier cable, should not be outlawed, so long
23 as it's within the, you know, anti-trust laws as their
24 behavior.

25 MS. GINSBURG: If I may also add, the Commission

1 recognized in the context of submarine cables the benefit of
2 volume discounts in the Guam Philippines order just a year
3 and a half ago, two years ago. So there are benefits, I
4 think, and the Commission has recognized that.

5 MS. ARBOGAST: All right, let me move on to the
6 next one, the last one, which is conditions. Any of you who
7 have a license know that there are a set of conditions that
8 we routinely impose on both private and common carrier
9 licensees. And I would just like to give folks an
10 opportunity to tell us which of those you think are no
11 longer necessary, or maybe never were necessary, that we
12 should consider doing away with? Are there any that you
13 think we should be considering adding on as routine
14 conditions?

15 MR. NAKAMURA: From Sprint, Kent Nakamura, again.
16 A couple of them like the defense or the Secretary of the
17 Army moving the cable. Maybe it made sense when there were
18 very, very few cables so each one was really, really
19 important strategically. I've been in this business a long
20 time. I've never been aware of a situation where they
21 ordered that the cable be moved. Maybe it's a good one to
22 look at, ask the Defense Department.

23 The second one was, you know, the boilerplate
24 about accepting the conditions in the license within 30
25 days. I mean, why not just let them, if somebody doesn't

1 like it, let them petition for reconsideration the same way
2 they do from all Commission orders if you don't like it.

3 MS. ARBOGAST: Anything else?

4 MR. TALBOT: I think we concur with that. There's
5 really no evidence that these conditions are really causing
6 any problems in the market, and if applicants want to be
7 relieved of standard conditions, they could request that,
8 perhaps in their application, and other parties could
9 comment.

10 MS. ARBOGAST: Okay, does anybody have a desire to
11 say something on undersea cables in general that hasn't come
12 up in the topics that we've covered today, within reason?

13 (Laughter.)

14 MR. MULETA: It has actually nothing to do -- we
15 have prepared a statement that we would like to hand to the
16 Commission and announce to whoever else wants a copy, we'll
17 leave it here.

18 MS. ARBOGAST: Okay, thank you.

19 MR. NAKAMURA: I have a leave behind on some of
20 the local and state permitting problems that are starting to
21 show up. Just by way of example, the State of New Jersey
22 was intimating to Sprint that maybe they wouldn't let us put
23 in the segment of capable between Manasquan, New Jersey and
24 Puckerton, because they wanted the thing to go on the land
25 instead of, you know, undersea. It was our impression it

1 was the Commission, not, you know, the New Jersey Department
2 of Environment, who decided whether submarine cables were in
3 the public interest.

4 MS. ARBOGAST: Let us know, now we're running out
5 of time, but are those sorts of comments designed to ask us
6 to somehow pre-empt, do something, get involved in this?

7 MR. NAKAMURA: Be aware of it.

8 MS. ARBOGAST: All right, okay. Anything else?

9 MR. COWHEY: Rebecca, I have a question on how
10 you'd like to proceed. There is a point I want to make
11 about what I think is the right approach for the Commission,
12 which I don't think has come out here. But on the other
13 hand, you may want to open this up to a question and ask for
14 a last thought or so later on.

15 MS. ARBOGAST: Say what you have to say and let's
16 give folks an opportunity to respond briefly to it. And
17 then what I would like to do is either close up or give
18 folks an opportunity to just address issues that haven't
19 come up so far.

20 MR. COWHEY: What we've heard today is that a
21 number of parties have suggested that there may still be
22 problems in the market from their viewpoint. Clearly,
23 Global Crossing believes that there is a significant problem
24 with the performance of this market.

25 Without going into the details of what we think

1 would be a good remedy, I would emphasize a couple of simple
2 points about what the Commission's options are. The choice
3 is not between the status quo and detailed micromanagement
4 of conditions in foreign countries. There is another
5 alternative available to the Commission. That alternative
6 would be to focus on ways of defining what constitutes an
7 impermissibly broad ownership structure for consortium
8 cable. That is, to set an ownership cap for a cable,
9 similar to the types of spectrum caps that the Commission
10 uses in the wireless market.

11 I would suggest that such a measure would focus
12 upon the control of market power as measured by control of
13 circuits and half circuits, of full circuits in the market,
14 of the cable landing parties were the parties who, after
15 all, do the planning of the cable systems and are the most
16 influential players in the market.

17 And I would suggest that such a rule, if adopted,
18 could allow also for the fact that we have heard parties
19 express an observation that there are variations in the
20 world market. For example, a limit on ownership
21 combinations might be forborne for thin route markets and
22 other measures used, in order to allow a balancing between
23 the desire to get new capacity out there in the marketplace
24 and, at the same time, still have some safeguards.

25 Similarly, such a rule might be forborne if the

1 relevant market was not a country-to-country market, like
2 the U.S. to the U.K., but was, instead, a vigorous regional
3 market, perhaps, such as the North Atlantic, where there is
4 a cost effective hubbing mechanism. And thus, in that way,
5 the Commission could both deal with variations in regional
6 markets and at the same time have a clear guideline to the
7 market about how it can put together consortium arrangements
8 or purely private single investor arrangements.

9 So the one point I would like to be carried away
10 from today is the choices, not between the status quo and
11 overly intrusive intervention overseas, nor denying entry to
12 foreign carriers to the U.S. market. There is a third way,
13 well grounded in competition tradition and available to the
14 Commission.

15 MS. ARBOGAST: Would anybody like to respond?

16 MS. MURRAY: Yes, if I could just say a word? We
17 would oppose overly intrusive intervention in the U.S.
18 domestic market when you're talking about non-dominant
19 carriers. And I don't accept that the spectrum analogy,
20 when you're talking about scarce resources. There may be a
21 reason to have a cap there, but we're not talking about
22 scarce resources here.

23 MR. NAKAMURA: I just wanted to paraphrase, to
24 close something that Dan Campbell, whom some of you may
25 know, who's in the submarine cable business with AT&T for

1 many years, told me a couple of times. He said, a
2 consortium is a great way to organize people to build a
3 cable. He said in a competitive, in a market that's
4 becoming competitive, it's not a good way to proceed. It's
5 very slow, it's very cumbersome, just doesn't function very
6 well in competitive markets.

7 He thinks that we may have seen the end of it and
8 so far as Sprint is concerned, if the consortium cable
9 doesn't change, can't change in response to developing
10 competition worldwide, then it will die.

11 MS. ARBOGAST: Going, going --

12 MR. TALBOT: I'd just like to add a couple of
13 points. The approach that we're hearing from Peter would
14 raise costs to all carriers. I mean, the effect would be to
15 limit the number of U.S. carriers that could go on any one
16 consortium cable, leaving the choice, either you have to
17 build on your own, thus expending much greater capital than
18 you otherwise would, or purchase more expensive capacity
19 from private operators like Global Crossing. The price is
20 two to five times cost, instead of the cost-basis level they
21 put consortium's price level at.

22 The Commission cannot proceed without facts. And
23 Global Crossing provides absolutely no basis for any
24 departure from the well established basis on which the
25 Commission has proceeded in this area case by case.

1 And just a more generic point at close. The
2 Commission has done a tremendous amount in recent years to
3 remove unnecessary regulation in the international market.
4 With a foreign participation order, you no longer have the
5 pervasive regulation of foreign entry into the U.S. market.

6 With the ISP order, you have removed a lot of regulation of
7 U.S. carrier's traffic relationships with foreign dominant
8 carriers, relying on things like competition in the foreign
9 market and the no special concessions rule.

10 There is absolutely no reason to reverse course
11 and go in totally the opposite direction to introduce much
12 greater regulation of non-dominant U.S. carriers that have
13 no affiliation with the foreign market power that Global
14 Crossing has pointed to.

15 MS. ARBOGAST: Thank you. I'd like to close by
16 thanking everybody for their long attention, for no break,
17 for many of the thoughtful comments that came through today.

18 I'd like to just repeat the invitation that if in the next
19 short, relatively short period of time, two to three weeks,
20 if people would like to come in and set up meetings with
21 staff to talk about any of these issues or any other issues
22 that you'd like us to consider, to please do so through Liz
23 Nightingale. Do you want to give your phone number?

24 MS. NIGHTINGALE: Yes, 418-2352.

25 MS. ARBOGAST: And again, thank you, everyone.

1 (Whereupon, at 5:15 p.m., the hearing in the
2 above-titled matter was concluded.)
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REPORTER'S CERTIFICATE

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HEARING DATE: November 8, 1999

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

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